

E-002/CN-91-19 ORDER NOTIFYING PARTIES OF INTENTION TO TAKE
OFFICIAL NOTICE OF SPECIFIC MATERIALS AND TO REOPEN RECORD TO
ADMIT PUBLIC COMMENTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Application
for a Certificate of Need for
Construction of an Independent
Spent Fuel Storage Installation

ISSUE DATE: May 5, 1992

DOCKET NO. E-002/CN-91-19

ORDER NOTIFYING PARTIES OF
INTENTION TO TAKE OFFICIAL
NOTICE OF SPECIFIC MATERIALS AND
TO REOPEN RECORD TO ADMIT PUBLIC
COMMENTS

PROCEDURAL HISTORY

On April 29, 1991 Northern States Power Company (NSP or the Company) filed an application for a certificate of need to construct a nuclear waste storage facility at its Prairie Island nuclear power plant. On May 29, 1991 the Commission found that the application was not substantially complete and required supplementary filings. On July 18, 1991 the Commission accepted the supplemented filing as being in proper form and substantially complete and referred the application to the Office of Administrative Hearings for contested case proceedings.

Administrative Law Judge Allan W. Klein held public hearings and evidentiary hearings on the application. He closed the record on March 20, 1992 and filed his report on April 10, 1992.

On April 28, 1992 the Commission met on its own motion to consider taking official notice of two items outside the record and to consider reopening the record to admit letters received from members of the public after the Administrative Law Judge closed the record.

FINDINGS AND CONCLUSIONS

Official Notice

Under Minn. Stat. § 14.60 agencies may take official notice of

"judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge." There are two sets of materials within this provision that may be relevant to this case.

The first is a set of Company responses to information requests on the construction and operation and maintenance costs for two emergency diesel generators to be constructed at the Prairie Island plant. These information requests were served by Commission staff in another docket, In the Matter of the Petition of Northern States Power Company for an Exemption from Certificate of Need Requirements, Docket No. E-002/M-92-246. NSP states the generators must be constructed to comply with a 1988 regulation of the federal Nuclear Regulatory Commission. These costs could have a bearing on the relative cost-effectiveness of the proposed storage facility and its various alternatives.

The second is a report by the staff of the Nuclear Regulatory Commission (the NRC) on a February 1992 incident involving a temporary loss of decay heat removal at the Prairie Island plant. The incident could have a bearing on the Company's proficiency record, with its implications for projected load factor, costs, and environmental risks. Since press coverage of the incident has made all parties and the Commission aware of it, the Commission believes it should take notice of the most authoritative account and analysis of the incident, the report of the NRC investigatory team.

By this Order, the Commission notifies all parties that it intends to take official notice of these documents, copies attached. The Commission will grant all parties ten days to contest the facts contained in these documents.

Admitting Late-Filed Public Comments into the Record

The certificate of need statute requires the Commission to ensure meaningful opportunities for public comment when it considers a certificate of need application. The Commission is to hold at least one public hearing, at a convenient time and place, and to designate a specific employee to "facilitate citizen participation in the hearing process." Minn. Stat. § 216B.243, subd. 4 (1990). The Commission has done this, and the public response has been substantial. When the Administrative Law Judge closed the record on December 20, 1991, he had received over 1,000 written expressions of opinion from members of the public. Since that time, however, the Commission has received several hundred more letters, resolutions, petitions, and similar written comments.

In light of the statutory emphasis on soliciting and considering public opinion, the Commission finds it appropriate to reopen the

record and admit all written public comments received to the date of this Order. The Commission will reopen the record for that purpose and will grant all parties ten days to file any comments on this action.

ORDER

1. The Company's responses to Commission information requests numbers 1 through 4 in Docket No. E-002/CN-92-246 are hereby officially noticed and may be fully contested by all parties. Comments contesting the facts in these documents shall be filed within 10 days of the date of this Order.
2. The Nuclear Regulatory Commission's investigatory staff report on the February 20, 1992 incident involving temporary loss of decay heat removal at the Prairie Island plant is hereby officially noticed and may be fully contested by all parties. Comments contesting the facts in that report shall be filed within 10 days of the date of this Order.
3. The record in this proceeding is hereby reopened for the limited purpose of admitting all letters, resolutions, petitions, and similar written comments from members of the public submitted between the official closing of the record and the date of this Order. Comments on this limited reopening of the record shall be filed within 10 days of the date of this Order.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)